

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOSEPHINE LINKER HART, JUDGE

DIVISION I

CACR07-774

February 13, 2008

BARBARA J. GOWERS

APPELLANT

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT
[NO. CR-04-186]

V.

HONORABLE J. MICHAEL FITZHUGH,
CIRCUIT JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Appellant, Barbara J. Gowers, argues that the circuit court erred in granting the State's petition to revoke her suspended sentence, as there was insufficient evidence that she willfully violated the terms and conditions of that sentence. We affirm.

According to a judgment and disposition order filed February 20, 2004, appellant pleaded guilty to possession of drug paraphernalia and possession of methamphetamine, and the circuit court suspended the imposition of her sentence for three years, conditioned on appellant not violating any laws. On December 18, 2006, the State filed a petition to set aside the suspended imposition of sentence, asserting in part that on December 15, 2006, appellant possessed a controlled substance with the intent to deliver.

At the hearing on the State's petition, Detective Wayne Barnett of the Fort Smith Police Department testified that on December 14, 2006, he received information from a reliable confidential informant that a female named "Barbara" and a male named "Jamie" were selling Lorcet tablets. The informant further stated that the Englander Motel was one of the places where they delivered the tablets. The informant agreed to participate in a controlled buy from Barbara and Jamie. According to Barnett, with the informant they made a telephone call to Barbara. The informant told Barbara how many Lorcet tablets they wanted, and Barbara told them that she was at a doctor's office and not able to get away. She stated, however, that Jamie was to meet her at the doctor's office in a few minutes and that she would send Jamie with the pills.

Later, a car pulled into the parking lot of the Englander Motel, and Barnett watched as a man left the car and entered and exited a room. Barnett then met with the informant, who stated that the man was Jamie, that he had delivered the pills they had ordered from Barbara, and that Jamie was also in possession of more of the pills. A patrol car stopped Jamie's vehicle, and the driver was identified as Jamie Ditcharo. Barnett searched the car and found a prescription bottle in the name of appellant with thirty blue tablets containing hydrocodone, a controlled substance. Barnett arrested Jamie.

The next day, appellant came to the police department of her own accord, and Barnett interviewed her. She stated that the pills were hers, that she had seen a doctor on December 6 and had obtained 120 Lorcet tablets, and that she and Jamie had sold about 100 of them. She further stated that she went to another physician on December 13, and the physician gave

her forty more. Barnett testified that “she had just got those filled and her and Jamie had sold some of those or had sold at least ten of them from the time that I had arrested Jamie with the pill bottle.” Barnett agreed that appellant was obtaining the pills and reselling them for cash. The circuit court found that appellant violated the conditions of the suspended imposition of sentence. On appeal, she argues that there was insufficient evidence that she violated the conditions. In a hearing to revoke, the burden is on the State to prove a violation of a condition of the suspended sentence by a preponderance of the evidence. *Stultz v. State*, 92 Ark. App. 204, 212 S.W.3d 42 (2005). On appellate review, the circuit court’s findings are upheld unless they are clearly against the preponderance of the evidence. *Id.* Because a determination of the preponderance of the evidence turns on questions of credibility and weight to be given testimony, we defer to the circuit court’s superior position in this regard. *Id.*

It is unlawful for any person to possess with intent to deliver a controlled substance. Ark. Code Ann. § 5-64-401(a) (Supp. 2007). Here, the State established that appellant, with her accomplice, Jamie Ditcharo, possessed hydrocodone, a controlled substance, and intended to deliver the hydrocodone by selling the tablets. Accordingly, the circuit court’s determination that appellant violated a condition of her suspended sentence was not clearly against the preponderance of the evidence.

Affirmed.

BIRD and MARSHALL, JJ., agree.